

RECEIVED  
CENTRAL FAX CENTER  
MAR 21 2008

## REPLACEMENT PRE-APPEAL BRIEF REQUEST FOR REVIEW


Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

Approved for use through xx/xx/200x. OMB 0651-00xx

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) U02-0203.39
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]  on _____  Signature _____  Typed or printed Name _____	Application Number 10/604,982	Filed August 29, 2003
	First Named Inventor Findikli et al.	
	Art Unit 2617	Examiner Ariel A. Balaoing
	Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.  This request is being filed with a notice of appeal.  The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.	
I am the  <input type="checkbox"/> applicant/inventor.  <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.7.1. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)  <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>55,130</u>  <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____		
<div style="text-align: right;"> _____ Signature  R. Brian Drozd Typed or printed name  919-286-8000 Telephone number  3/20/08 Date</div>		
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.		
<input checked="" type="checkbox"/> *Total of 1 forms are submitted.		

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed applicable form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

TRI11671435v1

RECEIVED  
CENTRAL FAX CENTER  
MAR 21 2008

REPLACEMENT REMARKS IN SUPPORT OF  
PRE-APPEAL BRIEF REQUEST FOR REVIEW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Findikli et al.	)	
Serial No.:	10/604,982	)	Confirmation No. 1981
Filing Date:	August 29, 2003	)	
Examiner:	Ariel A Balaoing	)	
Art Unit:	2617	)	
Attorney Docket:	U02-0208.39	)	
Title:	METHOD AND SYSTEM FOR	)	
	REGISTRATION OF LICENSED MODULES	)	
	IN MOBILE DEVICES	)	

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

REMARKS IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicants submit that the current and preceding office actions issued by the Examiner in the present application contain clear errors in the Examiner's rejections as well as omissions of one or more essential elements needed for a *prima facie* rejection under 35 U.S.C. § 103(a).

The present invention is related to methods, apparatus, and a mobile device for detecting the initial access of a software package that has been previously installed in the mobile device and registering its use. The claimed invention also includes the use of specific messages to accomplish this registration, and the collection of module parameters to aid in the process. The registration process occurs while the user uses the software so that registration is substantially transparent to the user.

The Examiner rejected claims 1-3, 5, 6, 8-11, 16-20, 26, 27, 29, 30, 32, 33, 36-39, 43, and 44 under 35 USC § 103(a) as being obvious in view of published U.S. Patent Application 2003/0224823 to Hurst et al. ("Hurst") in combination with published U.S. Patent Application 2002/0162016 to Colvin. For a proper rejection based on Section 103(a), the prior art reference (or references when combined) must teach or suggest all the claim limitations. M.P.E.P. § 2143. All of these claims, either directly or through dependency, currently recite sending a registration message, "while allowing use of the licensed software package without requiring permission so that the registering of the licensed software package is substantially transparent to the user . . . ."

TRJ1671193v1  
TRJ1636706v1

REPLACEMENT REMARKS IN SUPPORT OF  
PRE-APPEAL BRIEF REQUEST FOR REVIEW

Serial No.: 10/604,982

Applicants reiterate their arguments with respect to Hurst in this regard. Hurst discloses a system in which *activation*, rather than *registration* is required. Such activation is NOT transparent to the user and requires a response from the server in order to unlock the content. Hurst repeatedly refers to an "attempt" to access the secured content, and further teaches that the user must agree that they wish to use the content. Such a process is clearly not transparent to the user and does not allow use of the content without requiring permission, thus teaching away from Applicants' claimed invention.

In the Advisory Action, the Examiner stated that an "automatic activation" in paragraph [0048] of Hurst is transparent to the user solely because there is "no additional user intervention." Applicants disagree. Even though no additional user intervention is required for the "automatic activation" in Hurst, the content must still be activated "when the user attempts to access the content and agrees he wants to use the content," and thus, the content cannot be used until activation is complete. See, for example, paragraphs [0047]-[0050] of Hurst. Because the user in Hurst must still wait for completion of the "automatic activation" to use the software, Hurst does not teach registering the licensed software "while allowing use of the licensed software package . . . so that the registering of the licensed software package is substantially transparent to the user . . . ."

In the final office action, the Examiner agreed that Hurst does not disclose sending a registration message "while allowing use of the licensed software package." However, the Examiner looked to Colvin for the teaching of this concept. Nevertheless, Colvin is no better than Hurst in this regard. Colvin requires a user to enter one authorization code to make software even partially operable. Colvin requires the *user* to contact a "software license compliance representative" for an additional authorization code before being permitted to take full advantage of the software. See, for example, paragraph [0017] of Colvin. In fact, during initial use of the software in Colvin, *the end user must contact an authorized representative* to obtain the appropriate authorization code or password. See paragraph [0029]. It is difficult to imagine a process that is less transparent and automatic, or that teaches further away from the recitations of Applicants' claims. The Examiner has pointed to language in paragraphs [0031] to [0034] of Colvin that refers to updating passwords or authorization codes automatically and transparently. However, these portions of Colvin are referring to periodic updates of

TRI11636706v1

TRI11671193v1

REPLACEMENT REMARKS IN SUPPORT OF  
PRE-APPEAL BRIEF REQUEST FOR REVIEWRECEIVED  
CENTRAL FAX CENTER

MAR 21 2008


Serial No.: 10/604,982

authorization credentials, not the software itself, and these credentials are updated long after the software has initially been activated. Applicants' claims are specifically directed to a software package being "initially accessed." The teachings of Colvin are not applicable to such a situation.

The Examiner has rejected claims 7, 31, and 40 under 35 U.S.C. § 103(a) as being obvious in view of Hurst in combination with Colvin and in further in combination with U.S. Patent No. 5,148,472 to Freese et al. ("Freese"). These claims are each dependent from one of the claims discussed above. Since the Examiner looks to Hurst in combination with Colvin for the recitations of the base claims, claims 7, 31 and 40 are patentable over the combination of Hurst, Colvin and Freese for at least the same reasons discussed above.

As the Examiner's rejections have been shown to be in clear error and lack essential elements of a *prima facie* Section 103 rejection or a *prima facie* obviousness rejection, it is requested that these claims be allowed to issue.

Respectfully submitted,

Date: 3/20/2008Telephone: (919) 286-8000  
Facsimile: (919) 286-8199  
R. Brian Drozd  
Registration No. 55,130  
Moore & Van Allen PLLC  
P.O. Box 13706  
Research Triangle Park, NC 27709-3706

TR11636706v1

TR11671193v1

T1